IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12296 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASH ALIAS GUDDU DINKARRAV MADAK

Versus

COMMISSIONER OF POLICE VADODARA

Appearance:

1. Special Civil Application No. 12296 of 2004

MR SATISH R PATEL for Petitioner No. 1

MR KIRAN R JANI for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No.3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/01/2005

ORAL JUDGEMENT

1. By way of filing this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged his detention in pursuance of order passed by the Police Commissioner, Vadodara City on 17.07.2004 in exercise of powers conferred upon him by Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short]. The

petitioner came to be detained as bootlegger from 17.07.2004 in pursuance of the above said order.

2. The grounds of detention as served upon the petitioner and placed on record reveal that the detaining authority took into consideration the investigation papers in four crimes registered against the petitioner under the Bombay Prohibition Act. First crime registered on 12.12.2003 before the City Police Station, Vadodara second on 15.04.2004 before City Police Station, Vadodara, third on 04.06.2004 before Panigate Police Station, Vadodra City and fourth on 18.06.2004 before City Police Station, Vadodara. In all four cases, allegations levelled against the petitioner that he was found in possession of country liquor. The detaining authority having gone through the investigating papers came to the conclusion that the petitioner was involved in activity of storing, selling and transporting the country liquor and was bootlegger, within the meaning of the PASA Act. The detaining authority also came to the conclusion that the activity of the petitioner was prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority came to the conclusion that the activities of the petitioner was required to be prevented forthwith for which the action under the general law against the petitioner was likely to take time and hence, the detaining authority passed an order of detention as aforesaid, which is under challenge in this petition.

3. Learned advocate Ms.S.R.Patel for the petitioner and learned AGP Mr.H.M.Prachchhak, for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority and as placed on record by the learned AGP is also taken into consideration.

4. From the contentions raised from both the sides, it appears that this petition can be disposed of, examining the contentions of the petitioner that the order of detention is bad in law because subjective satisfaction arrived at by the detaining authority that the activity of the petitioner disturbed the public order, is not based on any material.

5. True it is that from the material placed before the detaining authority, the detaining authority may reach to the subjective satisfaction that the activity of the detenu was prejudicial to the maintenance of public order, but to reach to that subjective satisfaction, there must be some credible material before the detaining authority denoting that the activity of the petitioner

was causing harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or wide spread danger to life, property or public health. Undoubtedly, the detaining authority relied upon only material of registration of four cases against the petitioner under the Bombay Prohibition Act. It is extent reach and impact of the activity which decides whether the activity alleged is prejudicial to the maintenance of public order. From the investigating papers, in crimes registered against the petitioner, nowhere it is indicated that the registration of crime itself was the activity prejudicial to the maintenance of public order. There must be some credible material to reach that satisfaction. The fact of registration of crimes for dealing in prohibited liquor, therefore, has no bearing on the question of maintenance of public order, especially in absence of any material that those activities of the petitioner have adversely affected the maintenance of public order. The petitioner may be punished for the alleged offences committed by him because of breach of law and order, but surely the acts constituting the offences cannot be said to have affected the even tempo of life of the community. Therefore, the subjective satisfaction arrived at by the detaining authority as to maintenance of public order in total absence availability of the material, is not valid, legal and in accordance with law. In this view of the matter, the order under challenge, is required to be quashed and set aside on this ground alone.

6. In the result, in view of the above discussion, this Special Civil Application is allowed. The order of detention passed against the petitioner by the Police Commissioner, Vadodara City on 17.07.2004 in exercise of powers conferred upon him under Section 3(2) of the PASA Act, is hereby quashed and set aside. The petitioner Prakash alias Guddu Dinkarrav Madak is hereby ordered to be set at liberty forthwith, if he is not required to be detained for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]